



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3368-98

20 August 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps filed enclosure (1) with this Board requesting that his naval record be corrected to show a better characterization of service than the undesirable discharge issued on 4 June 1970.

2. The Board, consisting of Mr. Kastner, Ms. Hare and Ms. Wiley, reviewed Petitioner's allegations of error and injustice on 7 July 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 27 November 1967 at age 18. At that time he had completed 10 years of education.

d. The record shows that Petitioner served in Vietnam from 4 May 1968 to 26 May 1969. While in Vietnam he participated in four combat operations and on 8 July 1968 he was wounded in action. In addition on 19 September 1968 he received nonjudicial punishment for use of marijuana.

On 29 July 1969 he began a period of unauthorized absence which lasted until he surrendered on 13 March 1970, a period of about 232 days. On 6 April 1970 he requested discharge for the good of the service to avoid trial by court-martial for the foregoing absence totaling about 232 days. His record shows that prior to submitting this request he conferred with a qualified military lawyer at which time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. His request was granted on 21 May 1970 and the undesirable discharge was issued on 4 June 1970.

f. Petitioner states that when he returned from Vietnam he found that his wife had been unfaithful and he became an unauthorized absentee to try and save his marriage and attend to the welfare of his infant son. Petitioner states that he subsequently remarried and has been a good citizen for many years. He has submitted documentation showing that he is now ordained minister. The Federal Bureau of Investigation has reported a felony conviction in 1971 for possession of stolen property for which he received probation.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In reaching its decision, the Board notes his initial periods of good service, the tour of duty in Vietnam during which he was wounded in action, his personal problems which led to his period of unauthorized absence and his documented post service life which is only blemished by a 28 year old conviction for possession of stolen property. On the other hand, the Board is well aware of his 232 day period of unauthorized absence and his request for discharge to avoid trial for that offense. Weighing all of the foregoing factors, the Board concludes that the positive aspects of the record outweigh the negative aspects, and believes that the discharge should now be recharacterized as a matter of clemency.


RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 7 July 1999 he was issued a general discharge by reason of good of the service vice the undesirable discharge actually issued on that date.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
- c. That the Department of Veterans Affairs be informed on request that Petitioner's application was received on 17 April

1998.

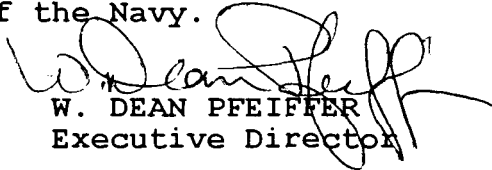
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director